

4/30/11

Documents in support of H.B. 6625 a bill to
Recognize the validity of divorces done defectively if the
parties believed they were divorced and neither side objects.

Docket #: FA 09 402 8295

SUPERIOR COURT

Philip Bern
203 722 0488

WILLIAM ESTRADA

J.D. OF NORWALK/STAMFORD

VS.

AT STAMFORD

LUZ MARINA MOLINA

December 4, 2009

JUDGMENT

This action, by writ, and complaint, claiming a dissolution of the marriage of the parties and other relief, as on file, came to this Court on April 21, 2009, and thence to later dates when the defendant appeared and the action was claimed for the family relations list and when the plaintiff appeared to prosecute the claim for a dissolution of the marriage.

The Court, having reviewed the stipulation of the parties finds the following:

1. The parties were married on December 23, 1981 in Itagui, Colombia, South America. There are no minor children of the marriage. The Parties, though both domiciled in the United States for approximately 10 years, sought a Divorce Decree in the Court of Medellin, Colombia, which was granted on May 8, 2008.

2. Though neither party were domiciled in Colombia at the time of the divorce, they were each represented and put in an Appearance by a Power of Attorney, which is permissible under Colombian jurisdiction. (Colombian Public Law 1/1976 ; Colombian Code of Civil Procedure § 694; Colombian Public Law 25/1992; Colombian Public Law 962/2005; and the Colombian Political Constitution)

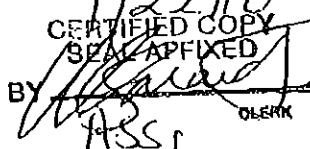
3. A foreign divorce decree would normally be recognized in the State of Connecticut because of the comity due to courts and jurisdictions of one nation to that of another (Practice Book Section 55.3). This recognition is extended despite the inapplicability of full faith and credit requirement of the Constitution unless it would be contrary to the public policy or good morals of the State (Practice Book 55.3). For example, if a Judgment is pronounced in a foreign country by a tribunal which does not have jurisdiction to do so. Practice Book 55.3.

4. Therefore, the Connecticut Courts will recognize the Judgments of other nations only if the requirement of jurisdiction is met. Practice Book 55.4.

5. Connecticut applies the rule that at least one of the spouses must be domiciled within the foreign state or nation to give that Court jurisdiction to grant a dissolution even if domicile is not required by the laws of that foreign jurisdiction. Practice Book 55.4.

6. Even though domicile might not be required by the laws of the jurisdiction granting divorce, Practice Book 55.4 and Litvaitis vs. Litvaitis, 162 Conn. 540 (1972).

7. Connecticut will apply its own laws and make a determination of whether the foreign state or country had acquired the necessary jurisdiction. Practice Book 55.4.

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JUDICIAL DISTRICT OF
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Murphy vs. Murphy, 34 Conn. Sup. 251 (1978).

8. The provisions relating to the enforcement of foreign matrimonial judgments in Connecticut are set forth in CGS Section 46b-70 et seq. and is limited to a proceeding in which both parties have entered an Appearance. Practice Book 55.5.

9. This language reflects the intent of the legislature to ensure both parties have actual notice of an out of state proceeding and to preclude judgments obtained by default in appearance. Practice Book 55.5 and Rule vs. Rule, 6 Conn. App. 541 Cert. Denied, 201 Conn. 801 (1986); Morabito vs. Wachsman, 191 Conn. 92 (1993).

10. In order to seek enforcement or modification of a foreign judgment in Connecticut, it has been suggested that the Court must make a specific finding that both parties had entered an Appearance in that action so as to assure that foreign court had both personal and subject matter jurisdiction. Practice Book 55.5 and Colby vs. Colby, 33 Conn. App. 417 (1994).

11. However, the Connecticut courts have carved out an exception to the rule that one of the two parties must have been domiciled in the foreign jurisdiction. (Baker vs. Baker, 39 Conn. Supp. 66 (1983); Yoder vs. Yoder, 31 Conn. Supp. 345 (1974); Walden vs. Lattarulo, 6 Conn. Cir. Ct 118 (1969).

12. The prior divorce in Colombia did not meet the jurisdictional requirements of Connecticut Practice Book Sections 55.1, 3, 4, 5, 6, 8 and 9 as neither party was domiciled in Connecticut at any time during the pendency of the divorce action (nor, for that matter, for the several years before it was initiated).

13. Nevertheless, the Court finds that both Parties have relied in good faith on the divorce that they maintained was granted legally under the laws of Colombia.

WHEREUPON it is adjudged that based on this reliance the Courts of Connecticut can and should recognize the validity of the Colombian divorce;

A legal divorce between the Parties being in effect this Court does not have jurisdiction or power to grant what in effect would be another divorce; and

The instant claim for dissolution is denied.


BY THE COURT,



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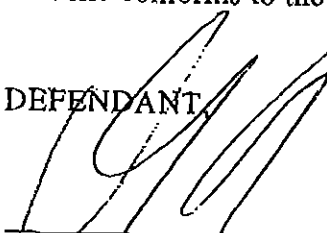
We hereby certify that the foregoing judgment file conforms to the judgment entered by the Court.

PLAINTIFF,



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